

Spit Happens: Results of NAPWHA's National Audit of Spitting Laws

Sally Cameron, Aaron Cogle, Michael Frommer

Download the resource at:
<http://bit.ly/TestingLawsAudit>

The System is Broken



Audit of Australia's
**Mandatory Disease
Testing Laws**



napwha national association of
people with HIV australia

Mandatory Disease Testing Laws in 5 States

State	Type of law	Related to	Introduction
Vic	Public health	Emergency services personnel	2010
Qld	Police administration	Victims of assault - general	2000
SA	Police administration	Emergency services personnel	2015
WA	Police administration	Police	2015
NT	Police administration	Police	2016

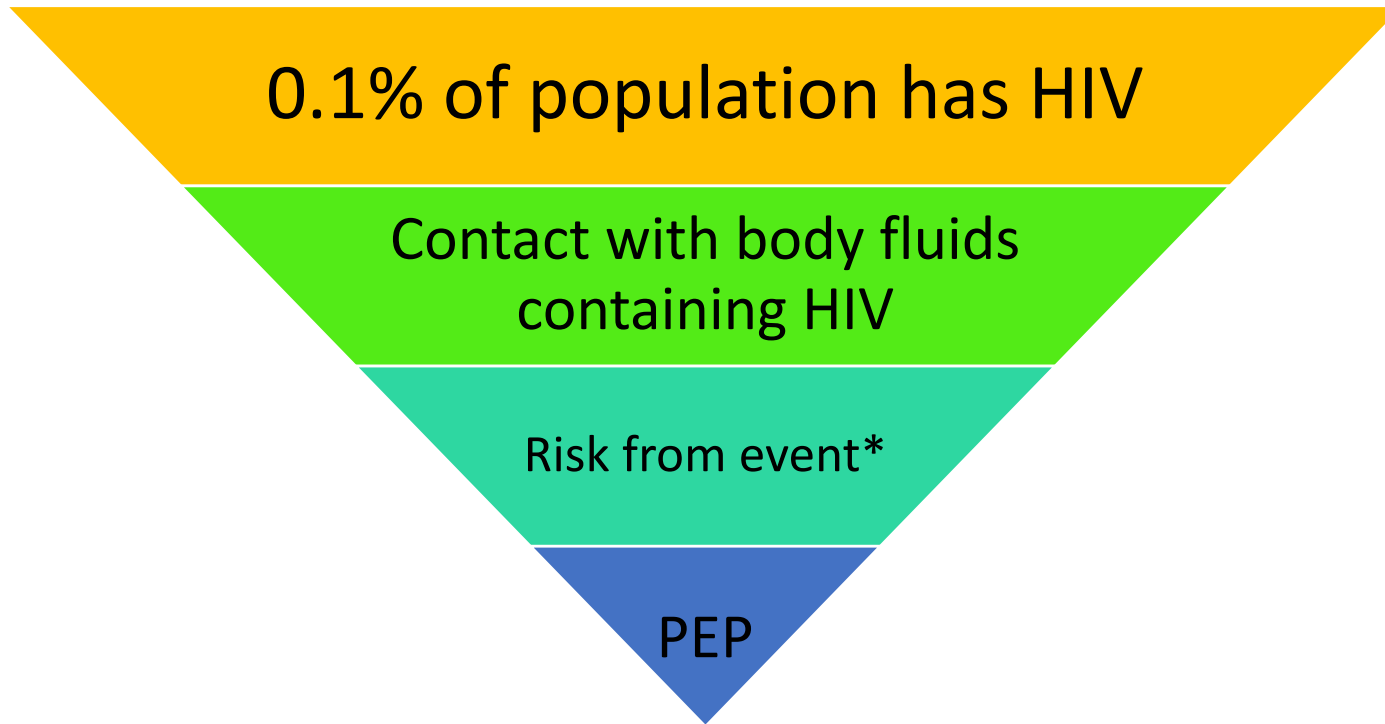


	Northern Territory	Queensland	South Australia	Victoria	Western Australia
Police	Teal	Light Grey	Teal	Teal	Teal
Police-related officers	Teal	Light Grey	Light Grey	Light Grey	Light Grey
Police service employees	Teal	Light Grey	Light Grey	Light Grey	Light Grey
Paramedics	Light Grey	Light Grey	Teal	Teal	Light Grey
Doctors	Light Grey	Light Grey	Teal	Teal	Light Grey
Nurses	Light Grey	Light Grey	Teal	Light Green	Light Grey
Emergency service workers	Light Grey	Light Grey	Teal	Light Green	Light Grey
Pathology-related	Light Grey	Light Grey	Teal	Light Green	Light Grey
Caregivers	Light Grey	Light Grey	Light Grey	Teal	Light Grey
(Victims of sexual offences and serious assaults and) persons who may have been exposed to bodily fluid during or soon after commission of the offence	Light Grey	Teal	Light Grey	Light Grey	Light Grey

Persons/ Occupations to whom Third Party Mandatory Testing Laws Relate



What are the risks from occupational exposure?



* Negligible to no possibility of transmission & decreasing as more people have low or uvl

Emergency services personnel are not acquiring HIV through occupational exposure



There have been no cases
of HIV transmission
to emergency services personnel
as a result of occupational
exposure
since 2002



Audit Findings

(2015-2018)



1. Threshold/trigger for testing too low

Northern Territory Suspect transfer of blood, *saliva* or faeces into broken skin or mucous membrane

Queensland Semen, blood, *saliva* or another bodily fluid may have been transmitted into the anus, vagina, a mucous membrane, or broken skin

South Australia Likely came in contact, or was otherwise exposed to blood, bodily fluids or other biological material capable of communicating or transmitting disease as a result of a suspected offence

Victoria Believes an incident has occurred in which HIV could have been transmitted

Western Australia Has reasonable grounds for suspecting a transfer of semen, blood and *saliva* into anus, vagina, mucous membrane or broken skin



Expert Consensus Statement on the Science of HIV in the Context of Criminal Law

- There is no possibility of HIV transmission via contact with the saliva of an HIV-positive person, including when saliva contains no, or a small quantity of, blood.
- The possibility of HIV transmission from biting where the HIV-positive person's saliva contains a significant quantity of blood, **and** their blood comes into contact with a mucous membrane or open wound, **and** their viral load is not low or undetectable varies from none to negligible.

2. Decision-making delegated to non-experts

Who makes the decision/order to test?

	For all people (unless otherwise stated)	A protected person (child or lacking capacity to consent)	If use of force required
Northern Territory	Police	Magistrate	
Queensland	Magistrate		
South Australia	Police		Magistrate
Victoria	Chief Health Officer	Magistrate	Magistrate
Western Australia	Police	Magistrate	



3. Decision making does not routinely allow procedural fairness

Jurisdiction	When court/magistrate is involved
Queensland	Always
NT & WA	If a child or person lacking capacity to consent
SA & Vic	If a person fails to follow order and use of force required

In NT, SA & WA

Most people -tests approved by senior police

- no means to present a defence
- no means for defence to be considered by an independent party to decide whether state intervention is warranted



4. Detention is not time restricted

In NT, SA & WA - may be detained for as long as 'reasonably necessary' to make the order and to test

5. Use of force is allowed

All states allow force or reasonable force to enforce an order

Qld, SA & Vic Requires a court order

NT & WA Court order if a child or unable to give consent



6. Hefty criminal penalties apply

Northern Territory	\$15,500 fine
South Australia	Up to 2 years' imprisonment
Western Australia	\$12,000 and 12 months' imprisonment

- No time limit, use of force & criminal penalties are problematic
- Threats of use may be leveraged to coerce compliance



7. At odds with national HIV strategy

National HIV Testing Policy:

- voluntary
- performed with informed consent
- conducted ethically
- beneficial to the person being tested

Only Victoria - person who could have transmitted the disease has been offered counselling before refusing to be tested and every effort be made to resolve any concerns the person may have regarding testing



8. Clinical context - may not be implementable

Clinicians - Would not agree to test a person who refuses to consent, particularly where use of force is involved:

- may not be possible or safe for patient
- may not be possible or safe for healthcare practitioner
- may not be for the benefit of the patient
- goes against ethical codes of medical practice

Concern that by time of testing, coercion may not be transparent

➤ In WA, affected police officer can overrule the specialist physician



9. Disconnect between laws, guidelines and practices

E.g. In WA

- Law allows ongoing detention and use of force
- Standing Operating Procedures state that if a person is not willing to comply, they are to be informed they have committed a criminal offence, issued a summons to court, and released immediately.



10. Systems lack transparent & accessible mechanisms

- No key entry point for enquiries
- FOI - extremely limited
- Minimal if any collection of data
- No states provided information, e.g. means of exposure



11. States have minimal or no monitoring processes

Does the data exist?

e.g. NT & Qld

Lack of structure:

- disinterest in the experience of persons being mandatorily testing
- lack of interest in the usefulness of mandatory testing
- lack of understanding of the complexity of routine health mechanisms
- disregard for cost or cost/benefit, e.g. WA – 32% of cases regional



12. State systems lack successful interface between health and police

- Departments of health largely locked out
- Lack of clear, ongoing interface between police and health
- Lack of requirements or infrastructure for reporting data to health
- Clinicians unfamiliar with processes and responsibilities or concerned about how their organisations could/would respond



How many times have the laws been used?

Number of mandatory HIV tests			
Jurisdiction	Number of times laws used	Time period	Source of data
Northern Territory	Not known	2016 - 2018	Police computer system unable to extract data
Queensland	Not known	2016 - 2018	Police computer system unable to extract data
South Australia	7	Feb 2017 – May 2018	Ombudsmans' audit
Victoria	0	July 2014 – June 2018	Department of Health and Welfare Annual Report
Western Australia	387 requests	Jan 2015 – mid Dec 2018	WA Police Commissioner / WA Police Force Health, Welfare and Safety Unit



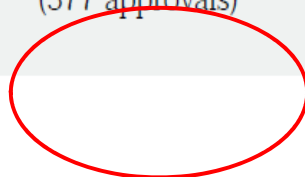
Victoria

	Section 134, Order for tests if an incident has occurred	Section 113, Other examination and testing orders	Section 117, public health order	Section 118, Extension of public health order
2017-2018 (Victorian Government, 2018)	0	0	2	0
2016-2017 (Victorian Government, 2017)	0	0	1	2
2015-2016 (Victorian Government, 2016)	0	0	1	2
2014-2015 (Victorian Government, 2015)	0	0	1	2




How many times have the laws been used?

Number of mandatory HIV tests			
Jurisdiction	Number of times laws used	Time period	Source of data
Northern Territory	Not known	2016 - 2018	Police computer system unable to extract data
Queensland	Not known	2016 - 2018	Police computer system unable to extract data
South Australia	7	Feb 2017 – May 2018	Ombudsmans' audit
Victoria	0	July 2014 – June 2018	Department of Health and Welfare Annual Report
Western Australia	387 requests (377 approvals)	Jan 2015 – mid Dec 2018	WA Police Commissioner / WA Police Force Health, Welfare and Safety Unit



In less than 4 years ...



387 requests
(377 approvals)

WA: Explanatory Memorandum associated with the Mandatory Testing (Infectious Diseases) Bill 2014

In 2013, there were 147 incidents recorded where officers were exposed to bodily fluids during the course of policing. However, only a small number of these cases will result in a requirement to take a blood sample under a disease authorisation. This is because the legislation will require a senior police officer to be satisfied that there has been a transfer of bodily fluid through penetration of a mucous membrane or through the broken skin of another person.

Audit Results

Who ordered that tests be undertaken? Don't know

What means of exposure is alleged to have occurred? Don't know

What proportion of those tested are Aboriginal or Torres Strait Islander? Don't know

How many times has mandatory testing of an accused revealed a positive result? Don't know

Has there been a case of HIV transmission from an occupational exposure? Don't know, except



NAPWHA & HJN recommend:

1. Repeal the laws
2. Review current systems
3. All orders go before judge, with recommendation by medical specialist
4. Consent (or absence) & means of gaining consent recorded & communicated to staff
5. Robust monitoring with results published annually
6. Restriction to real risk of transmission of specific infection
7. Review of clinical and other support procedures to ensure effective treatment
8. Scaling up education targeting emergency services workers' orgs and media regarding current science on HIV risk and treatments

There have been no cases
of HIV transmission
to emergency services
personnel
as a result of occupational
exposure
since 2002



Questions

- Who do you think is being tested?
- What's our strategy?
 - What are the compelling messages?
 - Who are our allies?
 - When do we start?